

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL NO. 3:03cv00439**

<b>DIRECTV, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>ROSS HERRING,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**THIS MATTER** is before the Court on Defendant's "Motion to Dismiss," which was filed March 22, 2004. (Doc. No. 44). Defendant's Motion was filed in response to the Original Complaint in this matter. Where, as here, an amended complaint is filed, motions to dismiss the original complaint become moot as a matter of law. Pure Country, Inc. v. Sigma Chi Fraternity, 312 F.3d 952, 956 (8th Cir.2002) (holding that the court should rule on a motion for leave to amend a complaint before deciding a motion to dismiss that same complaint because allowing leave to amend renders the motion to dismiss moot); Standard Chlorine of Del., Inc. v. Sinibaldi, 821 F.Supp. 232, 239-40 (D.Del.1992) (holding that an amended complaint renders a motion to dismiss the original complaint moot). Moreover, Defendant's arguments relating to "Improper Joinder" and claims under 18 U.S.C. § 2512 have been cured through the filing of the Amended Complaint and the dismissal of all other defendants except Defendant Herring. (See Docs. Nos. 50-51). The Court finds that Defendant's Motion to Dismiss should be denied without prejudice.

Additionally, this matter is before the Court *sua sponte* with respect to the status of Plaintiff's case. It appears that Plaintiff has not yet filed its Amended Complaint, other than as an attachment to its Motion to Amend. The Order allowing the Motion to Amend, filed February 28, 2005, is silent

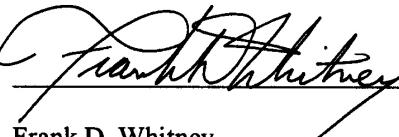
as to whether this Court deemed the Amended Complaint to be filed with the Motion or whether the Court intended for Plaintiff to file the Amended Complaint upon receipt of the Order. Plaintiff is instructed to electronically file its Amended Complaint with this Court within fourteen (14) days from the date this Order is entered. Defendant shall file his response in accordance with the Federal Rules of Civil Procedure. Since the Motion to Dismiss is denied without prejudice, Defendant may renew the motion to dismiss consistent with the Federal Rules of Civil Procedure. If Defendant willfully fails to answer the Amended Complaint or otherwise respond, Plaintiff should timely file an appropriate motion for entry of default and for default judgment.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that Defendant Ross Herring's March 22, 2004, Motion to Dismiss is **DENIED** without prejudice as **MOOT**.

**COUNSEL FOR PLAINTIFF** is, respectfully, directed to file its Amended Complaint within 14 days of the filing of this ORDER, and that filing shall trigger the applicable time limits to respond and for filing a motion to dismiss, if Defendant chooses to file such a motion.

Signed: August 4, 2006



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Frank D. Whitney  
United States District Judge

